

16 Am. Jur. 2d Constitutional Law § 149

American Jurisprudence, Second Edition | May 2021 Update

Constitutional Law

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V. Determination of Constitutionality of Legislation

B. Raising Questions of Constitutional Validity

2. Interest Essential to Raising Questions

c. Interest Requisite to Challenging Legislation as Discriminating Against or in Favor of a Class

§ 149. Standing of individuals championing class to challenge constitutionality of statute for discrimination toward class

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  665, 667

A member of a particular class which may be discriminated against does not necessarily have the right to champion any grievance of that entire class in the absence of any actual interest which is prejudiced or impaired by the statute in question.¹ Only someone who shows that he or she is injured may complain.² Ordinarily, the person cannot champion others who do not choose to complain.³ However, if one's own legal or property rights are affected by the operation of a law, he or she may assail it even though in doing so he or she also champions a particular group's rights.⁴ Thus, a physician who demonstrates that abortion funding regulations have a direct financial impact on the physician's practice may assert the constitutional right of other individuals who are unable to assert those rights themselves.⁵ The mother of an illegitimate child had standing to seek redress for her claim that a state's statutory scheme governing the modification of child support agreements violated the equal protection rights of all illegitimate children and their parents within the state.⁶

The rule that to have standing to litigate a constitutional question one must be asserting the right in his or her own behalf is only a rule of practice which may be outweighed by the need to protect fundamental rights.⁷ That need, in turn, may prompt courts on grounds of broad constitutional policy to proceed without blind adherence to technical rules of representation.⁸ Thus, the Supreme Court, in "unique situations," will disregard its usual rule denying standing to raise another's rights. "Unique circumstances" will most readily be found where "fundamental rights" would otherwise be denied, and where, if standing to

the instant plaintiff were denied, the possessor of the constitutional right would "have no adequate remedy"⁹ to vindicate his or her right, or "it would be difficult if not impossible for the person whose rights are asserted to present their grievance before any court."¹⁰ In this situation, the reasons underlying the rule denying standing to raise another's right—which is only a rule of practice—are outweighed by the need to protect fundamental rights.¹¹ For example, the Supreme Court granted standing to doctors to attack a statute excluding abortions not "medically indicated" from Medicaid benefits to needy persons, thus allowing them to litigate the rights of their patients.¹² In addition, an attorney against whom a disciplinary proceeding was brought for allegedly collecting illegal fees in black lung benefit cases had standing to object to the constitutionality of the attorney's fees provisions of the Black Lung Benefits Act as allegedly depriving black lung benefit claimants of their due process right to legal representation in such cases.¹³ However, a prison inmate lacked standing to assert the free speech rights of prison guards relative to a prison policy prohibiting the guards from communicating directly with the parole board on behalf of the prisoners, as the interests of the prisoner and the guards were not aligned, and no evidence was presented of the guards' inability to protect their own rights.¹⁴

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Footnotes

- 1 [Cronin v. Adams](#), 192 U.S. 108, 24 S. Ct. 219, 48 L. Ed. 365 (1904).
- 2 [Cook v. Davis](#), 178 F.2d 595 (5th Cir. 1949); [Harris v. Echols](#), 146 F. Supp. 607 (S.D. Ga. 1956).
Plaintiffs representing a class of homeless persons lacked standing to raise an Eighth Amendment challenge to the city's "sleeping in public" ordinance where although numerous tickets had been issued, none of the named plaintiffs had been convicted of violating the ordinance, and thus, none were able to establish the requisite case or controversy with defendants. [Johnson v. City of Dallas, Tex.](#), 61 F.3d 442 (5th Cir. 1995).
- 3 [Cook v. Davis](#), 178 F.2d 595 (5th Cir. 1949); [Harris v. Echols](#), 146 F. Supp. 607 (S.D. Ga. 1956).
- 4 [Village of Arlington Heights v. Metropolitan Housing Development Corp.](#), 429 U.S. 252, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977).
- 5 [Diamond v. Charles](#), 476 U.S. 54, 106 S. Ct. 1697, 90 L. Ed. 2d 48 (1986).
- 6 [Williams v. Lambert](#), 46 F.3d 1275 (2d Cir. 1995).
- 7 [Smith v. Board of Ed. of Morrilton School Dist. No. 32](#), 365 F.2d 770, 10 Fed. R. Serv. 2d 342 (8th Cir. 1966).
- 8 [Smith v. Board of Ed. of Morrilton School Dist. No. 32](#), 365 F.2d 770, 10 Fed. R. Serv. 2d 342 (8th Cir. 1966).
- 9 [Truax v. Raich](#), 239 U.S. 33, 36 S. Ct. 7, 60 L. Ed. 131 (1915).
- 10 [Barrows v. Jackson](#), 346 U.S. 249, 73 S. Ct. 1031, 97 L. Ed. 1586 (1953).
Constitutional rights can be litigated by a plaintiff "where the constitutional rights of persons who are not immediately before the Court could not be effectively vindicated except through an appropriate representative before the Court." [National Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson](#), 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958).
- 11 [Barrows v. Jackson](#), 346 U.S. 249, 73 S. Ct. 1031, 97 L. Ed. 1586 (1953).
- 12 [Singleton v. Wulff](#), 428 U.S. 106, 96 S. Ct. 2868, 49 L. Ed. 2d 826 (1976).
- 13 [U.S. Dept. of Labor v. Triplett](#), 494 U.S. 715, 110 S. Ct. 1428, 108 L. Ed. 2d 701 (1990).
- 14 [Harris v. Evans](#), 20 F.3d 1118 (11th Cir. 1994).

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